

## APPENDIX D -- FINAL RULES

Parts 51 and 64 of the Code of Federal Regulations are amended as follows:

### PART 51 -- INTERCONNECTION

1. The authority citation for Part 51 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §§ 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Revise § 51.217(c)(3) to read as follows:

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(c) \*\*\*

(3) *Directory assistance services and directory listings.*

(i) *Access to directory assistance.* A LEC shall permit competing providers to have access to its directory assistance services, including directory assistance databases, so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iv) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested. A LEC must supply access to directory assistance in the manner specified by the competing provider, including transfer of the LECs' directory assistance databases in readily accessible magnetic tape, electronic or other convenient format, as provided in paragraph (c)(3)(iii) of this section. Updates to the directory assistance database shall be made in the same format as the initial transfer (unless the requesting LEC requests otherwise), and shall be performed in a timely manner, taking no longer than those made to the providing LEC's own database. A LEC shall accept the listings of those customers served by competing providers for inclusion in its directory assistance/operator services databases.

(ii) *Access to directory listings.* A LEC that compiles directory listings shall share directory listings with competing providers in the manner specified by the competing provider, including readily accessible tape or electronic formats, as provided in paragraph (c)(3)(iii) of this section. Such data shall be provided in a timely fashion.

(iii) *Format.* A LEC shall provide access to its directory assistance services, including directory assistance databases, and to its directory listings in any format the competing provider specifies, if the LEC's internal systems can accommodate that format.

(a) If a LEC's internal systems do not permit it provide directory assistance or directory listings in the format the specified by the competing provider, the LEC shall:

(1) Within thirty days of receiving the request, inform the competing provider that the requested format cannot be accommodated and tell the requesting provider which formats can be accommodated; and

(2) Provide the requested directory assistance or directory listings in the format the competing provider chooses from among the available formats.

(iv) *Unlisted numbers.* A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available, with the exception of customer name and address. The LEC shall ensure that access is permitted to the same directory information, including customer name and address, that is available to its own directory assistance customers.

(v) *Adjuncts to services.* Operator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (e.g., rating tables or customer information databases) necessary to allow competing providers full use of these services.

## **PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

**AUTHORITY: 47 U.S.C. 1-5, 7, 201-05, 222.**

2. The table of contents for Part 64 is revised to read as follows:

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### **Subpart X -- Subscriber List Information**

64.2301	Basis and purpose.
64.2305	Definitions.
64.2309	Provision of subscriber list information.
64.2313	Timely basis.
64.2317	Unbundled basis.
64.2321	Nondiscriminatory rates, terms, and conditions.
64.2325	Reasonable rates, terms, and conditions.
64.2329	Format.
64.2333	Burden of Proof

- 64.2337      Directory publishing purposes.
- 64.2341      Record keeping.
- 64.2345      Primary advertising classification.

3.      Subpart X is added to read as follows:

#### **Subpart X -- Subscriber List Information**

##### **§ 64.2301      Basis and purpose.**

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement section 222(e) of the Communications Act of 1934, as amended, 47 U.S.C. 222. Section 222(e) requires that "a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."

##### **64.2305      Definitions.**

Terms used in this subpart have the following meanings:

(a) *Base file subscriber list information.* A directory publisher requests base file subscriber list information when the publisher requests, as of a given date, all of a carrier's subscriber list information that the publisher wishes to include in one or more directories.

(b) *Business subscriber.* Business subscriber refers to a subscriber to telephone exchange service for businesses.

(c) *Primary advertising classification.* A primary advertising classification is the principal business heading under which a subscriber to telephone exchange service for businesses chooses to be listed in the yellow pages, if the carrier either assigns that heading or is obligated to provide yellow pages listings as part of telephone exchange service to businesses. In other circumstances, a primary advertising classification is the classification of a subscriber to telephone exchange service as a business subscriber.

(d) *Residential subscriber.* Residential subscriber refers to a subscriber to telephone exchange service that is not a business subscriber.

(e) *Subscriber list information.* Subscriber list information is any information (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are

assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(f) *Telecommunications carrier.* A telecommunications carrier is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

(g) *Telephone exchange service.* Telephone exchange service means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(h) *Updated subscriber list information.* A directory publisher requests updated subscriber list information when the publisher requests changes to all or any part of a carrier's subscriber list information occurring between specified dates.

#### **§ 64.2309      Provision of subscriber list information.**

(a) A telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(b) The obligation under paragraph (a) to provide a particular telephone subscriber's subscriber list information extends only to the carrier that provides that subscriber with telephone exchange service.

#### **§ 64.2313      Timely basis.**

(a) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on a timely basis only if the carrier provides the requested information to the requesting directory publisher either:

(1) At the time at which, or according to the schedule under which, the directory publisher requests that the subscriber list information be provided;

(2) When the carrier does not receive at least thirty days advance notice of the time the directory publisher requests that subscriber list information be provided, on the first business day that is at least thirty days from date the carrier receives that request; or

(3) At a time determined in accordance with paragraph (b).

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information within either of the time frames specified in subparagraph (a)(1), the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested schedule cannot be accommodated and tell the directory publisher which schedules can be accommodated; and

(2) Adhere to the schedule the directory publisher chooses from among the available schedules.

**§ 64.2317 Unbundled basis.**

(a) A directory publisher may request that a carrier unbundle subscriber list information on any basis for the purpose of publishing one or more directories.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on an unbundled basis only if the carrier provides:

(1) The listings the directory publisher requests and no other listings, products, or services; or

(2) Subscriber list information on a basis determined in accordance with paragraph (c).

(c) If the carrier's internal systems do not permit it unbundle subscriber list information on the basis a directory publisher requests, the carrier must:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that it cannot unbundle subscriber list information on the requested basis and tell the directory publisher the bases on which the carrier can unbundle subscriber list information; and

(2) In accordance with paragraph (d), provide subscriber list information to the directory publisher unbundled on the basis the directory publisher chooses from among the available bases.

(d) If a carrier provides a directory publisher listings in addition to those the directory publisher requests, the carrier may impose charges for, and the directory publisher may publish, only the requested listings.

(e) A carrier must not require directory publishers to purchase any product or service other than subscriber list information as a condition of obtaining subscriber list information.

**§ 64.2321 Nondiscriminatory rates, terms, and conditions.**

For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under nondiscriminatory rates, terms, and conditions only if the carrier provides subscriber list information gathered in its capacity as a provider of telephone exchange service to a requesting directory publisher at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or other directory publishers.

**§ 64.2325 Reasonable rates, terms, and conditions.**

(a) For purposes of § 64.2309, a telecommunications carrier will be presumed to provide subscriber list information under reasonable rates if its rates are no more than \$0.04 a listing for base file subscriber list information and no more than \$0.06 a listing for updated subscriber list information.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under reasonable terms and conditions only if the carrier does not restrict a directory publisher's choice of directory format.

**§ 64.2329 Format.**

(a) A carrier shall provide subscriber list information obtained in its capacity as a provider of telephone exchange service to a requesting directory publisher in the format the publisher specifies, if the carrier's internal systems can accommodate that format.

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information in the format the directory publisher specifies, the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested format cannot be accommodated and tell the directory publisher which formats can be accommodated; and

(2) Provide the requested subscriber list information in the format the directory publisher chooses from among the available formats.

**§ 64.2333 Burden of Proof.**

(a) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it claims its internal

subscriber list information systems cannot accommodate the delivery time, delivery schedule, unbundling level, or format requested by a directory publisher.

(b) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it seeks a rate exceeding \$0.04 per listing for base file subscriber list information or \$0.06 per listing for updated subscriber list information.

**§ 64.2337     Directory publishing purposes.**

(a) Except to the extent the carrier and directory publisher otherwise agree, a directory publisher shall use subscriber list information obtained pursuant to section 222(e) of the Communications Act or § 64.2309 only for the purpose of publishing directories.

(b) A directory publisher uses subscriber list information "for the purpose of publishing directories" if the publisher includes that information in a directory, or uses that information to determine what information should be included in a directory, solicit advertisers for a directory, or deliver directories.

(c) A telecommunications carrier may require any person requesting subscriber list information pursuant to section 222(e) of the Communications Act or § 64.2309 to certify that the publisher will use the information only for purposes of publishing a directory.

(d) A carrier must provide subscriber list information to a requesting directory publisher even if the carrier believes that the directory publisher will use that information for purposes other than or in addition to directory publishing.

**§ 64.2341     Record keeping.**

(a) A telecommunications carrier must retain, for at least one year after its expiration, each written contract that it has executed for the provision of subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

(b) A telecommunications carrier must maintain, for at least one year after the carrier provides subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf, records of any of its rates, terms, and conditions for providing that subscriber list information which are not set forth in a written contract.

(c) A carrier shall make the contracts and records described in paragraphs (a) and (b) available, upon request, to the Commission and to any directory publisher that requests those contracts and records for the purpose of publishing a directory.

**§ 64.2345 Primary advertising classification.**

A primary advertising classification is assigned at the time of the establishment of telephone exchange service if the carrier that provides telephone exchange service assigns the classification or if a tariff or State requirement obligates the carrier to provide yellow pages listings as part of telephone exchange service to businesses.



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**Separate Statement  
of  
Commissioner Susan Ness**

*Re: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket Nos. 96-115, 96-98).*

Today the Commission has adopted rules implementing section 222(e) of the Telecommunications Act pertaining to subscriber list information. Regrettably, it has taken the Commission over three years to complete this rulemaking proceeding.

I write separately because, unlike the majority, I would have decided the issue regarding Internet databases that contain subscriber list information. Section 222(e) entitles directory publishers to obtain subscriber list information "for the purpose of publishing directories in any format." The majority seeks further comment on whether the phrase "directories in any format" encompasses Internet databases. To me, the statutory language is clear on this point -- "in any format" necessarily includes directories published in an electronic format.<sup>1</sup> Indeed, at least one Bell company markets its Internet database containing subscriber list information as "The Real White Pages."<sup>2</sup> We are, after all, living in an electronic age. The Internet has increasingly become an important part of our everyday lives. By not deciding this issue -- particularly in light of the length of time that it has taken the Commission to complete this proceeding -- we postpone the day that competitive directory publishers (and, thus, Internet-savvy consumers) will reap the pro-competitive benefits envisioned by Congress.

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<sup>1</sup> See, e.g., *Reno v. ACLU*, 521 U.S. 844, 117 S.Ct. 2329, 2335 (1997) (stating that "[a]ny person or organization with a computer connected to the Internet can 'publish' information").

<sup>2</sup> See <http://yp.bellsouth.com> (stating that "[t]he Real White Pages was designed to provide greater efficiency through quick electronic directory searches and to eliminate the hassle associated with telephone directory distribution").

**SEPARATE STATEMENT OF  
COMMISSIONER HAROLD FURCHTGOTT-ROTH  
DISSENTING IN PART**

*Re: In the Matters of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended (CC Docket Nos. 96-115; 96-98; 99-\*\*).*

I support aspects of this Order, but write separately to express several reservations. I strenuously object to the majority's establishment of a presumptively reasonable rate for updated subscriber listing information in the absence of credible evidence supporting that decision. I also disagree with the majority's definition of "nondiscriminatory" and am troubled by the resulting imposition of requirements that will result in the micromanagement of the provision of operator services and directory assistance. Finally, I object to the initiation of a rulemaking proceeding that I find to be unnecessary.

**I. Presumptive Rate for Updates**

I dissent from the majority's conclusion that \$0.06 per listing for "updated" subscriber listing information is a presumptively reasonable rate. *Supra.* at paras. 99-103. First, I cannot accept the notion that there is a single price that can be presumed reasonable when the cost of updated listings will vary according to the nature of the particular request. Regulators can attempt to regulate price, quantity, or quality. We cannot expect to regulate any two of these factors without affecting the third, and it is virtually impossible to regulate all three. In today's Order, the majority permits the requesting entity to choose the quantity and the quality of the listings, while the government sets the price. *See supra.* Part II.G. This leaves no variable of control to the supplier. There is simply no way to predict the cost of *different* types of requested subscriber listing information, in *different* quantities, and in *different* formats. This approach is analogous to requiring a grocer to charge \$1 for every item in the store, without regard to the quantity or quality of any particular product.

The majority concedes that "the costs a carrier incurs in responding to requests for subscriber list information may vary, depending on the delivery schedules and levels of unbundling requested, among other factors." *See supra.* at par. 67. The majority nevertheless presumes that \$0.06 will be a reasonable rate unless the carrier proves otherwise. Given their recognition that costs will vary depending on numerous factors, the establishment of a presumptive rate for updated listings seems rather arbitrary.

Moreover, assuming it was possible to demonstrate a particular cost for updated listings, there is no evidence on the record to support the majority's presumptive rate. The majority does not rest its conclusion on any factual basis; rather, as the Order concedes, it is "based on the *assumptions* that (1) a carrier's allocations of common costs and overheads should not vary significantly according to whether a directory publisher requests updated, rather than base file, subscriber list information; and (2) a carrier's incremental costs of providing subscriber list information should not significantly vary with the type of subscriber list information requested." *Supra.* at par. 100. (emphasis added). The majority provides no basis in fact for these assumptions, and I cannot fully agree with them. To the contrary, I would assume that, given the variety of requests permitted by today's Order, incremental costs can vary widely, particularly for smaller carriers, based on the nature of the request. Even if it were true that a large carrier with dedicated personnel to handle requests pursuant to section 222 may face small incremental costs in providing updated listings, it is not at all apparent that smaller carriers will face similar cost structures.

Finally, the statute does not require us to establish a presumptively reasonable rate for updates. By setting a \$0.04 presumptively reasonable rate for the base file, the Commission facilitates the purchase of these listings by those entities interested in obtaining them. There is simply no need to establish a "one-size-fits-all" approach to setting a rate for updates, particularly in the absence of any evidence to support this rate.

## II. Petitions for Reconsideration

I am also troubled by the Order's treatment of the petitions for reconsideration of the Local Competition Order, Second Report and Order. First, I do not agree with the Commission's interpretation of "nondiscriminatory." Moreover, I am concerned that, in applying that standard to operator services and directory assistance, today's Order results in micromanagement of these services and places too high of a burden on carriers, big and small, new entrants and incumbents, that operate their own operator services and directory assistance platform. It is not clear that Congress intended, through section 251(b), to establish an elaborate set of requirements for carriers that develop, or have developed, these capabilities.

Today's order affirms the Commission's definition of "nondiscriminatory access" for purposes of section 251(b). *Supra.* at par. 128. Section 51.217 of the Commission's rules defines "nondiscriminatory access" as access "that is at least equal to the access that the providing local exchange carrier itself receives" and includes "[t]he ability of a competing provider to obtain access that is at least equal in quality to that of the providing LEC."

I would interpret "nondiscriminatory" differently. To me, this term is not meant to address discrimination as between the incumbent LEC and requesting telecommunications carriers; rather it is meant to prohibit discrimination by the incumbent LEC as among requesting carriers. That is, nondiscriminatory access does not mean that the incumbent LEC

must treat all requesting telecommunications carriers as it treats itself, but that the incumbent LEC must treat a particular requesting telecommunications carrier just as it treats all other requesting telecommunications carriers.

This interpretation is more consistent with the principle of statutory construction that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."<sup>1</sup> In the *next subsection* of section 251, Congress explicitly required incumbent LECs to provide interconnection that is not only "nondiscriminatory," but also "that is at least equal in quality to that provided by the LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier provided interconnection."<sup>2</sup> If "nondiscriminatory" already included the concept of "equal in quality," this additional language would be mere surplusage, and statutes should be construed to avoid such a result. Congress could have imposed the "equal in quality" standard in section 251(b)(3), but did not do so.

Application of this nondiscriminatory standard produces troubling results in the majority's related interpretation of the requirements imposed by section 251(b)(3). I am concerned, for example, that the elaborate rebranding requirements perpetuated and expanded in today's Order go beyond what is necessary to implement this section. Inasmuch as these rebranding requirements arise out of the nondiscriminatory standard, one wonders whether the majority would be prepared to impose a requirement that carriers rebrand their trucks and staff uniforms as complete implementation of this standard would seem to require. Moreover, I am concerned that the majority overlooks the fact that its elaborate requirements apply to *all* local exchange carriers, even those that are attempting to develop a platform for operator services and directory assistance. I fear that the obligations placed on such carriers in today's Order may discourage new investment in these platforms. I would prefer to let competitive forces dictate the how carriers provide operator services and directory assistance. Indeed, it appears that competition in this market is developing successfully.

### III. "Publishing Directories in Any Format"

Finally, I find it unnecessary to initiate a Notice of Proposed Rulemaking regarding the availability of subscriber list information to requesting parties that intend to publish directories either electronically or orally. The statute requires that carriers make this information available "to any person upon request for the purpose of publishing directories in any format." Webster's Third New International dictionary is instructive. It defines "publish" to mean "to declare publicly: make generally known: disclose, circulate." Thus an operator orally

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<sup>1</sup> *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991).

<sup>2</sup> Section 251(c)(2).

"making known" subscriber list information to a requesting party over the telephone or an entity that "discloses" this information on an Internet site would clearly be engaging in activity that the dictionary would call "publishing."<sup>3</sup> In an age where commentators discuss the potential for a "paperless society," I cannot believe that a reference to publishing "in any format" should be limited to the printing of subscriber list information on paper.

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<sup>3</sup> See *Gertz v. Welch*, 418 U.S.323, 332 (1974) (deciding principal issue of whether "a newspaper or broadcaster that 'publishes' defamatory falsehoods about an individual" may claim a constitutional privilege against liability); see also *Reno v. ACLU*, 521 U.S. 844, 853 (1997) ("[a]ny person or organization with a computer connected to the Internet can 'publish' information").